



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2004

Ms. Traci S. Briggs
Deputy City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2004-7916

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209346.

The Killeen Police Department (the "department") received a request for "records on domestic violence, child abuse, or any arrests, and 911 calls" involving two named individuals during a certain time period. You indicate that some information has been released but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

The present request, in part, asks for all arrest records held by the department regarding two named individuals. We find that this portion of the request requires the department to compile the criminal history of the named individuals, and thus implicates the individuals' rights to privacy as contemplated in *Reporters Committee*. Accordingly, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, such information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, the requestor also asks for information pertaining to specified incidents, which you have submitted for our review. Because the requestor specifically asks for this information, it is not part of a compilation of an individual's criminal history as contemplated in *Reporters Committee*, and may not be withheld on that basis.

You assert that the submitted call for service report is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code.¹ Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the submitted call for service report constitutes a record used or developed in an investigation under chapter 261, this information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted call for service report is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this document under section 552.101 as information made confidential by law.

In summary, to the extent the department maintains law enforcement records depicting the individuals at issue as suspects, arrestees, or criminal defendants, such information must be

¹Section 552.101 also encompasses information made confidential by statute.

withheld under section 552.101 in conjunction with common-law privacy. The department must withhold the submitted call for service report under section 552.101 in conjunction with section 261.201 of the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a stylized flourish at the end.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 209346

Enc. Submitted documents

c: Ms. Irene Stump
109 East Navajo Street
Huachuca City, Arizona 85616
(w/o enclosures)